

MINUTES OF THE 128TH MEETING OF THE
WATER MANAGEMENT BOARD
MATTHEW TRAINING CENTER
523 EAST CAPITOL
PIERRE, SOUTH DAKOTA

MAY 7, 2003

CALL TO ORDER: Chairman Dwayne Rollag called the meeting to order at 8:30 a.m. CDT. A quorum was present.

The following were present at the meeting.

Board Members: Dwayne Rollag, Leo Holzbauer, Rodney Freeman, Bernita Loucks, Francis Brink, and Marian Gunderson

Department of Environment and Natural Resources (DENR): Garland Erbele, Lynn Beck, Eric Gronlund, Karen Schlaak, Jim Goodman, Ken Buhler, Mark Rath, and Don Stroup, Water Rights Program; Jeanne Goodman, Kent Woodmansey, Jason Roggow, Jeanie Votava, Kevin Miller, and Ben Myers, Surface Water Quality Program.

Attorney General's Office: Diane Best and Jeff Hallem.

Legislative Oversight Committee: Representative Lou Sebert, Mitchell; Representative Dale Hargens, Miller; and Senator Marguerite Kleven, Sturgis.

Public Hearing on Amendments to Surface Water Discharge Permit Rules: Michael Schmidt, Dell Rapids; Kathy Zander, Jason Miller, Steve Willard, and Angela Ehlers, Pierre; Merrill Karlen, Oacoma; Scott Jones, Midland; and John Rubendall, Mitchell.

Water Permit Nos. 5837A-3 and 5850A-3: Paul Taylor, Sioux City, IA and Wade Reimers, Pierre.

Findings of Fact and Conclusions of Law for Water Right No. 970-3: Bill St. Clair, Tulare.

Water Permit No. 6400-3: Floyd Peterson, Hitchcock.

Water Permit No. 6398-3: Harvey Wollman, Frankfort.

Water Permit No. 2729A-3: Harvey Wollman, Frankfort and LeRoy Gross, Hitchcock.

Kingbrook RWS: Randy Jencks, Arlington.

Other: Pat Cerny, Burke and Ivan Strickel, Ft. Yates, ND.

APPROVE MINUTES FROM MARCH 5-6 MEETING: Motion by Brink, seconded by Loucks, to approve the March 5-6, 2003, Water Management Board meeting minutes. Motion carried.

JULY BOARD MEETING: The next meeting will be July 10 and 11, 2003, in Pierre. (Note: The meeting was originally scheduled for July 9 and 10.)

ADMINISTER THE OATH TO DENR STAFF: Chairman Rollag administered the oath to DENR staff members who intended to testify during the board meeting.

COMPARISON OF WELL DRILLERS REQUIREMENTS IN NEIGHBORING STATES: Ken Buhler presented the board with a table showing other states' requirements for well drillers. (See attachment.)

At the last meeting some of the board members expressed concern that being a secretary for a well driller could qualify as having five years of experience. Mr. Rollag asked Mr. Buhler to highlight the experience required by other states.

Mr. Buhler stated that Wyoming does not require a driller's license. Minnesota requires four years of experience, drilling at least five wells per year and at least 1000 hours per year on a drill rig. Iowa requires two years of experience. Nebraska does not require any experience; however, they do require a geology, code, specialized skills/drilling category test. Montana requires a one-year apprenticeship or another state's license, and North Dakota requires one year of experience in the last three years with the drilling of at least six wells during that year.

Ms. Gunderson said South Dakota should require a well driller to take an examination and to provide proof of insurance.

Mr. Freeman said the rules should be amended to require a skills and code test and not require five years of experience. He stated that the state should not require a well driller to provide proof of insurance.

Chairman Rollag suggested that staff contact the SD Well Drillers Association and ask them for some input regarding the possibility of amending the requirements.

Motion by Gunderson, seconded by Brink, to invite the Well Drillers Association to appear at a future board meeting to discuss the possibility of amending the well driller's requirements. Motion carried.

PUBLIC HEARING TO CONSIDER AMENDMENTS TO SURFACE WATER DISCHARGE PERMIT RULES: Chairman Rollag opened the hearing at 9:00 a.m. CDT.

The purpose of the hearing was to consider adoption of amendments to ARSD 74:52:01:05, 74:52:02:22, 74:52:02:23, 74:52:02:24, 74:52:02:25, 74:52:02:26, 74:52:02:27, 74:52:02:28, 74:52:02:29, 74:52:02:30, and 74:52:10:01.

The proposed rule changes revise existing state rules so they remain consistent with new federal regulations for concentrated animal feeding operations. The US Environmental Protection Agency (EPA) first adopted regulations in 1974 that limited the runoff and discharge of manure from certain animal feeding operations. EPA revised the rules in 1976. In order to obtain the authority to administer the program in South Dakota, the Water Management Board adopted state regulations in 1987 and 1992 that met the federal requirements for limiting runoff from regulated animal feeding operations. In 1997 and 1998, DENR issued two general permits that regulate the collection, storage, and land application of manure and process wastewater generated at regulated feedlots.

On February 12, 2003, EPA published new federal rules. The federal rules become effective on April 14, 2003. In order to retain state jurisdiction, South Dakota must revise its regulations to be consistent with the new federal rules. The primary differences between the existing state rules and the new federal rules is that the federal rules require additional storage capacity to hold manure and process wastewater generated at new swine, poultry, and veal operations; additional recordkeeping and reporting requirements for owners/operators of regulated animal feeding operations; and nutrient management plans based on both the nitrogen and phosphorous content of the manure.

Changes to 74:52:10:01 will also update the effluent standards for surface water discharge permits and pretreatment industrial users to reflect any federal changes to these standards since the department last adopted them by reference on July 1, 1991.

Kent Woodmansey reported that notice of this public hearing was published in 11 newspapers by April 12, 2003. Notice was also sent to DENR's interested parties mailing list, Legislative Research Council (LRC) and the Bureau of Finance and Management. The public notice, proposed rules, and a link to EPA's rules were placed on the Surface Water Quality Program's web page.

Written comments were submitted by Charlie Johnson, Dakota Rural Action and Charles Ullery, SDSU.

The LRC reviewed the proposed rules for legality, style and form. The changes made by LRC were incorporated into the final rules.

Mr. Woodmansey provided a summary of proposed amendments to the rules. He requested the board adopt the following changes to the rules.

74:52:01:05. Point sources that require SWD permits. The following point sources require SWD permits:

- (1) Concentrated animal feeding operations as defined in §§ 74:52:02:23, 74:52:02:25, and 71:52:02:2974:52:02:22:
- (2) Concentrated aquatic animal production facilities as defined in §§ 74:52:02:31, 74:52:02:32, and 74:52:02:35;
- (3) Discharges into aquaculture projects;
- (4) Storm water discharges as designated in § 74:52:02:36;

- (5) Silvicultural point sources;
- (6) Publicly owned treatment works;
- (7) Industrial discharges;
- (8) Privately owned treatment works;
- (9) Federal facilities, except those located on Indian reservations;
- (10) Treatment works treating domestic sewage, whether or not the treatment works is otherwise required to obtain a SWD permit; and
- (11) Other point sources as determined by the secretary.

CHAPTER 74:52:02

APPLICATION REQUIREMENTS

Section

74:52:02:01 Applicability.

74:52:02:02 Correlation between state and EPA permits.

74:52:02:03 Time to apply for new facilities.

74:52:02:04 Time to reapply for dischargers with currently effective EPA-issued NPDES permits.

74:52:02:05 SWD permit renewals.

74:52:02:06 Continuation of expired permits.

74:52:02:07 Review of applications.

74:52:02:08 Information requirements.

74:52:02:09 Application requirements for new sources and new discharges.

74:52:02:10 Application requirements for existing manufacturing, commercial, mining, and silvicultural dischargers.

74:52:02:11 Application requirements for manufacturing, commercial, mining, and silvicultural facilities which discharge only nonprocess wastewater.

74:52:02:12 Additional requirements for new dischargers.

74:52:02:13 Application requirements for whole effluent biological toxicity testing by POTWs.

74:52:02:14 Application requirements for POTWs with approved pretreatment programs.

74:52:02:14.01 Application requirements for treatment works treating domestic sewage.

74:52:02:15 Recordkeeping.

74:52:02:16 Service of process.

74:52:02:17 Confidentiality of information.

74:52:02:18 Signatory requirements for permit applications.

74:52:02:19 Signatory requirements for reports.

74:52:02:20 Changes to signatory authorization.

74:52:02:21 Certification of documents.

74:52:02:22 Additional Requirements for concentrated ~~Concentrated~~ animal feeding operations ~~may be covered under general permit.~~

~~74:52:02:23 Definitions applicable to concentrated animal feeding operations. Repealed.~~

~~74:52:02:24 Two or more concentrated animal feeding operations may be permitted as one operation. Repealed.~~

~~74:52:02:25 Designation of animal feeding operation as concentrated animal feeding operation. Repealed.~~

~~74:52:02:26 Small feeding operations not subject to SWD regulations unless they discharge pollutants. Repealed.~~

~~74:52:02:27 Inspection of small feeding operations required before subjecting to SWD regulations. Repealed.~~

74:52:02:28 Application requirements for new and existing concentrated animal feeding operations.

~~74:52:02:29 Criteria for concentrated animal feeding operation.] Repealed.~~

~~74:52:02:30 Effluent limits for concentrated animal feeding operations. Permit requirements for the land application of manure, litter, and process wastewater.~~

74:52:02:31 Definitions applicable to concentrated aquatic animal production facilities.

74:52:02:32 Designation of small aquatic animal production facility as concentrated aquatic animal production facility.

74:52:02:33 Inspection of small aquatic animal production facilities required before subjecting to SAID regulations.

74:52:02:34 Application requirements for new and existing concentrated aquatic animal production facilities.

74:52:02:35 Criteria for concentrated aquatic animal production facility.

74:52:02:36 Storm water discharges subject to SWD permit regulations.

74:52:02:37 Application requirements for storm water discharges.

74:52:02:38 Definitions applicable to silvicultural activities.

74:52:02:39 Primary industry categories.

74:52:02:40 SWD permit application testing requirements.

74:52:02:41 Organic toxic pollutants in GC/MS fractions.

74:52:02:42 Application requirements for testing other toxic pollutants -- Metals, cyanide, and total phenols.

74:52:02:43 Application requirements for testing conventional and nonconventional pollutants.

74:52:02:44 Application requirements for identifying toxic pollutants and hazardous substances.

74:52:02:45 Certain application requirements suspended for some categories and subcategories of primary industries.

74:52:02:46 General permits.

74:52:02:47 Secretary may require individual permit.

74:52:02:22. **Additional Requirements for concentrated animal feeding operations ~~may be covered under general permit.~~ In addition to the requirements in chapters 74:52:01 to 74:52:11, inclusive, requirements for concentrates. Concentrated animal feeding operations are covered by the SWD general permit for concentrated animal feeding operations unless they are required by the secretary to obtain an individual permit contained in 40 CFR 122.23 and 40 CFR 122.42 (e) (February 12, 2003). In the federal rules that are adopted by reference pursuant to this section, the term "NPDES permit" means "surface water discharge permit", and the terms "State Director" and "Director" mean "secretary".**

74:52:02:23. **Definitions applicable to concentrated animal feeding operations. The following definitions are applicable to concentrated animal feeding operations:**

(1) "Animal feeding operation," a lot or facility, other than an aquatic animal production facility, where the following conditions are met:

~~(a) Animals, other than aquatic animals, have been, are or will be stabled or confined and fed or maintained for a total of 45 days or more in any 12-month period; and~~
~~(b) Crops, vegetation forage growth, or post harvest residues are not sustained in the normal growing season over any portion of the lot or facility;~~
~~(2) "Animal unit," a unit of measurement for any animal feeding operation calculated by adding the following numbers: the number of slaughter and feeder cattle multiplied by 1.0, plus the number of mature dairy cattle multiplied by 1.4, plus the number of swine weighing over 25 kilograms (approximately 55 pounds) multiplied by 0.4, plus the number of sheep multiplied by 0.1, plus the number of horses multiplied by 2.0;~~
~~(3) "Man-made," constructed by man and used for the purpose of transporting wastes; and~~
~~(4) "Concentrated animal feeding operation," an "animal feeding operation" which meets the criteria in subdivision (1) of this section or which the secretary designates under §~~
~~74:52:02:25.Repealed.~~

74:52:02:24. Two or more concentrated animal feeding operations may be permitted as one operation. ~~Two or more animal feeding operations under common ownership are considered, for the purposes of the SWD permit regulations, to be a single animal feeding operation if they adjoin each other or if they use a common area or system for the disposal of wastes.~~Repealed.
Source: 14 SDR 86, effective December 24, 1987; transferred from § 74:03:18:22, July 1, 1996.

74:52:02:25. Designation of animal feeding operation as concentrated animal feeding operation. ~~The secretary may determine that any animal feeding operation is a concentrated animal feeding operation upon determination that it is a significant contributor of pollution to the waters of the state. In making this designation, the secretary shall consider the following factors:~~
~~(1) The size of the animal feeding operation and the amount of wastes reaching waters of the state;~~
~~(2) The location of the animal feeding operation in relation to waters of the state;~~
~~(3) The means of conveyance of animal wastes and process wastewaters into waters of the state; and~~
~~(4) The slope, vegetation, rainfall, and other factors affecting the likelihood or frequency of discharge of animal wastes and process wastewaters into waters of the state.~~Repealed.
Source: 14 SDR 86, effective December 24, 1987; transferred from & 74:03:18:23. July 1, 1996.

74:52:02:26. Small feeding operations not subject to SWD regulations unless they discharge pollutants. ~~No animal feeding operation with less than the numbers of animals set forth in § 74:52:02:29 will be designated as a concentrated animal feeding operation unless:~~
~~(1) Pollutants are discharged into waters of the state through a man-made ditch, flushing system, or other similar man-made device; or~~
~~(2) Pollutants are discharged directly into surface waters of the state which originate outside of and over, across or through the facility or otherwise come into direct contact with the animals confined in the operations.~~Repealed.
Source: 14 SDR 86, effective December 24, 1987; transferred from § 74:03:18:24, July 1, 1996.

74:52:02:27. Inspection of small feeding operations required before subjecting to SWD regulations. ~~A permit application is not required from a concentrated animal feeding operation designated by the secretary until the secretary has conducted an on-site inspection of the~~

~~operation and determined that the operation could and should be regulated under chapters 74:52:01 to 74:52:11, inclusive. Repealed.~~

74:52:02:28. Application requirements for new and existing concentrated animal feeding operations. ~~In addition to the requirements in § 74:52:02:08, new~~ New and existing concentrated animal feeding operations shall provide the following information, using the application form provided by the secretary:

- (1) ~~The type and number of animals in open confinement and housed under roof~~ The name of the owner or operator;
- (2) ~~The number of acres used for confinement feeding; and~~ The facility location and mailing address;
- (3) ~~The design basis for the runoff diversion and control system, if one exists, including the number of acres of contributing drainage, the storage capacity, and the design safety factor.~~ Latitude and longitude of the entrance to the production area;
- (4) A topographic map, or other map if a topographic map is unavailable, extending one mile beyond the property boundaries of the operation and showing the specific location of the production area;
- (5) Specific information about the number and type of animals, whether in open confinement or housed under roof, including beef cattle, broilers, layers, swine weighing 55 pounds or more, swine weighing less than 55 pounds, mature dairy cows, dairy heifers, veal calves, sheep and lambs, horses, ducks, turkeys, and other;
- (6) The type of containment and storage, such as anaerobic lagoon, roofed storage shed, storage ponds, underfloor pits, above ground storage tanks, below ground storage tanks, concrete pad, impervious soil pad, other and total capacity for manure, litter, and process wastewater storage in tons or gallons;
- (7) The total number of acres under control of the applicant available for land application of manure, litter, or process wastewater;
- (8) Estimated amounts of manure, litter, and process wastewater generated per year in tons or gallons;
- (9) Estimated amounts of manure, litter, and process wastewater transferred to other persons per year in tons or gallons;
- (10) For CAFOs that must seek coverage under a permit after December 31, 2006, a nutrient management plan that will be implemented upon the date of permit coverage;
- (11) The activities being conducted which require the applicant to obtain a SWD permit;
- (12) From one to four Standard Industrial Classification (SIC) codes which best reflect the principal products or services provided by the facility;
- (13) The operator's address, telephone number, ownership status, and federal, state, private, public, or other entity status;
- (14) Whether the facility is located on Indian lands;
- (15) A list of all other relevant environmental permits or construction approvals received or required by state or federal law;
- (16) Manure management system plans and specifications for review and approval in accordance with Chapter 74:53:04;
- (17) A brief description of the nature of the business;
- (18) Any other information required by the secretary to determine any significant adverse

environmental effects of the discharge:

- (19) The signature of the certifying official under § 74:52:02:18;
- (20) Whether the applicant, any officer, director, partner, or resident general manager making the application meets any of the criteria contained in SDCL 1-40-27; and
- (21) Whether the application substantially duplicates an application by the same applicant which was denied by the secretary within the past five years and which has not been reversed by a court of competent jurisdiction.

Subdivisions (1) to (10), inclusive, of this section must also be included in any notice of intent for coverage under a general permit for concentrated animal feeding operations.

74:52:02:29. Criteria for concentrated animal feeding operation. ~~An animal feeding operation is a concentrated animal feeding operation for purposes of this chapter if either of the following criteria are met:~~

~~(1) More than the numbers of animals specified in any of the following categories are confined:~~

- ~~(a) 1,000 slaughter or feeder cattle;~~
- ~~(b) 700 mature dairy cattle, whether milked or dry cows;~~
- ~~(c) 2,500 swine each weighing over 25 kilograms, (approximately 55 pounds);~~
- ~~(d) 500 horses;~~
- ~~(e) 10,000 sheep or lambs;~~
- ~~(f) 55,000 turkeys;~~
- ~~(g) 100,000 laying hens or broilers, if the facility has continuous overflow watering;~~
- ~~(h) 30,000 laying hens or broilers, if the facility has a liquid manure handling system;~~
- ~~(i) 5,000 ducks; or~~
- ~~(j) 1,000 animal units; or~~

~~(2) More than the following number and types of animals, as set out in subsections (a) to (j), inclusive, are confined and either of the conditions of discharge set out under subsection (h) are present:~~

- ~~(a) 300 slaughter or feeder cattle;~~
- ~~(b) 200 mature dairy cattle, whether milked or dry cows;~~
- ~~(c) 750 swine, each weighing over 25 kilograms (approximately 55 pounds);~~
- ~~(d) 150 horses;~~
- ~~(e) 3,000 sheep or lambs;~~
- ~~(f) 16,500 turkeys;~~
- ~~(g) 30,000 laying hens or broilers, if the facility has continuous overflow watering;~~
- ~~(h) 9,000 laying hens or broilers, if the facility has a liquid manure handling system;~~
- ~~(i) 1,500 ducks; or~~
- ~~(j) 300 animal units; and~~

~~(k) Conditions of discharge:~~

- ~~(i) Pollutants are discharged into surface waters of the state through a man-made ditch, flushing system; or other similar man-made device; or~~
- ~~(ii) Pollutants are discharged directly into surface waters of the state which originate outside of and pass over, across or through the facility or otherwise come into direct contact with the animals confined in the operation.~~

74:52:02:30. ~~Effluent limits for concentrated animal feeding operations~~ **Permit requirements for the land application of manure, litter, and process wastewater.** ~~Effluent limits for all concentrated animal feeding operations will be for no discharge except in the event of the 25-year 24-hour storm event unless other limits are determined necessary by the secretary to protect surface water quality standards.~~ Any permit for a concentrated animal feeding operation must include technical standards for nutrient management established by the Secretary to minimize nitrogen and phosphorous transport from land application fields to surface waters of the state.

74:52:10:01. Effluent guidelines and standards for surface water discharge permits and pretreatment industrial users. The effluent guidelines and standards for surface water discharge permits and pretreatment industrial users are those in 40 C.F.R. Subchapter N ~~(July 1, 1991)~~ February 12, 2003).

Following his presentation, Mr. Woodmansey answered questions from the board and requested approval of the proposed amendments.

Chairman Rollag requested public comments from the audience.

Scott Jones, SD Cattlemen's Association and Mike Schmidt, Moody County provided public comments. Mr. Schmidt also submitted his comments in writing during the hearing.

Chairman Rollag called for board action.

Motion by Brink, seconded by Freeman, to adopt amendments to ARSD 74:52:01:05, 74:52:02:22, 74:52:02:23, 74:52:02:24, 74:52:02:25, 74:52:02:26, 74:52:02:27, 74:52:02:28, 74:52:02:29, 74:52:02:30, and 74:52:10:01. Motion carried.

Chairman Rollag thanked the participants and declared the hearing closed at 9:30 a.m. CDT.

FINDINGS OF FACT, CONCLUSIONS OF LAW AND FINAL DECISION IN THE MATTER OF CANCELLATION OF A PORTION OF WATER RIGHT NO. 970-3, WILLIAM ST.

CLAIR: Diane Best reported that Mr. St. Clair has requested that the board delay action on the Findings of Fact, Conclusions of Law and Final Decision. Mr. St. Clair has submitted another application, which will be before the board at its July meeting. Ms. Best said the department is in favor of delaying this matter until the July board meeting.

Motion by Freeman, seconded by Holzbauer, to delay action on the Findings of Fact, Conclusions of Law and Final Decision until the July 2003 Water Management Board meeting. Motion carried.

REINSTATEMENT OF WATER PERMIT NOS. 5837A-3 AND 5850A-3, TAYLOR

PROPERTIES: Diane Best reported that Taylor Properties received water permits for a suburban housing development in Union County several years ago. Taylor Properties has not completed construction.

Ms. Best provided the board with a copy of the statutes that apply to reinstatement of water permits. SDCL 46-2A-8 pertains to the time for completion of construction and use of the water. SDCL 46-2A-8.1 pertains to the procedure for reinstatement of a permit after expiration of time for construction.

The chief engineer recommended reinstatement of the two water permits.

Petitions to intervene were submitted by Matthew R. Metzgar, Union County State's Attorney, Dennis Henze, Union County Land Use Administrator, and Susan Bergeson, Riverland Estates Board of Directors. None of the intervenors appeared at today's hearing.

Ms. Best offered Exhibit 1, the department's files on Water Permit application Nos. 5837A-3, 5850A-3, 5837-3, and 5850-3. The exhibit was accepted into the record.

Ms. Best noted that the only legal standard for reinstatement is the issue of water availability.

Jim Goodman presented his reports on the applications.

Application No. 5837A-3 proposes to reinstate water permit application No. 5837-3 which appropriates 0.67 cfs (300 gpm) from three wells about 265 feet deep in Union County. The water is to be used in a suburban housing development. The application proposes to reinstate No. 5837-3 because the original project has not been completed.

The source of water is the Dakota Aquifer. The Dakota consists of interbedded sands, sandstone and shale that is about 400 feet thick in this area. The aquifer is under artesian conditions and underlies 452 square miles and contains an estimated 7.8 million acre-feet of recoverable water in storage in Union County. The Dakota Formation also lies directly upon and is hydraulically connected to the Missouri Elk Point Aquifer in southern Union County.

The Water Rights Program monitors five observation wells in this area, but only one completed into the Dakota Formation (UN-98A) located about two miles north of this application. A hydrograph for this well is included in Mr. Goodman's report.

There is an existing water right (No. 5754-3) located about 1,200 feet east of this application which also obtains water from the Dakota Formation.

Mr. Goodman concluded that interference is not expected to be a concern. Water is available from the Dakota Formation. Drawdown is not expected to be significant. Wells authorized by this application must be constructed in accordance with SD Well Construction Standards. Reinstatement under SDCL 46-2A-8.1 is acceptable in this situation.

The chief engineer recommended approval of Water Permit application No. 5837A-3 with the Well Interference Qualification and Well Construction Rule Qualification No. 2.

Water Permit Application No. 5850A-3 proposes to reinstate water permit No. 5850-3 which appropriates 3.33 cfs (1,500 gpm) from one well approximately 100 feet deep in Union County.

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The water is to be used for fire protection for a suburban housing development. Application No. 5850A-3 proposes to reinstate Water Permit No. 5850-3 because the project has not been completed.

The water source is the Missouri Elk Point Aquifer which is a shallow surficial-type aquifer. Depending on the geologic conditions at the site, the aquifer can be under either water table or slightly artesian conditions. The aquifer underlies 180 square miles in Union County and contains about 1.5 million acre-feet of water in storage. The aquifer is hydraulically connected to the Missouri River and the Big Sioux River.

The Water Rights Program monitors five observation wells within a three-mile radius of this application. UN-78C is located about 1½ mile to the northeast of this application. Water levels for this well show good correlation with climatic conditions. The water level record indicates that the aquifer is capable of sustaining additional withdrawals. A hydrograph for UN-78C is included in Mr. Goodman's report.

There are no other nearby permits that obtain water from the Missouri Elk Point aquifer.

Mr. Goodman concluded the water is available from the Missouri Elk Point aquifer. Interference is not a concern. The well must be completed in accordance with SD Well Construction Standards.

The chief engineer recommended approval of Water Permit Application No. 5850A-3 with the Well Interference Qualification and Well Construction Rule Qualification No. 2.

Wade Reimers, attorney from Pierre, represented Taylor Properties. He called Paul Taylor, President of Taylor Properties, Inc.

Mr. Taylor was administered the oath by Chairman Rollag. He testified that Taylor Properties proposed to develop a condominium at this site. The three wells were for three different buildings and for fire protection. Mr. Taylor said he believes the project will move forward and Taylor Properties intends to comply with all qualifications placed on the permits.

Mr. Reimers asked Mr. Taylor to discuss the zoning issue. Mr. Taylor stated that the county originally approved the rezoning of the property. In 1995 a petition was submitted referring the zoning ordinance to a public vote. As the result of the vote, the ordinance that would have allowed Taylor Properties to proceed with the project failed. Taylor Properties filed a lawsuit against Union County, and the Supreme Court ruled in favor of Union County.

Mr. Reimers stated that he does not believe the Supreme Court decision relates to the applications before the Water Management today. Mr. Reimers said Taylor Properties has the right to go back and ask for another referendum or have the county address the issue once again.

Mr. Taylor stated that the proposed project included three buildings with 12 condominiums in each building. The project would be built during a four-year period.

Board discussion took place.

Motion by Gunderson, seconded by Freeman, to approve Water Permit Application No. 5837A-3 and Water Permit Application No. 5850A-3, Taylor Properties, Inc., subject to the qualifications set forth by the chief engineer. Motion carried.

NEW WATER PERMIT APPLICATIONS: The pertinent qualifications attached to approved water permit applications throughout the hearings are listed below:

Well Interference Qualification

The well(s) approved under this permit will be located near domestic wells and other wells which may obtain water from the same aquifer. The well owner under this Permit shall control his withdrawals so there is not a reduction of needed water supplies in adequate domestic wells or in adequate wells having prior water rights.

Well Construction Rule Qualification No. 1

The well(s) authorized by Permit No. _____ shall be constructed by a licensed well driller and construction shall comply with Water Management Board Well Construction Rules, Chapter 74:02:04 with the well casing pressure grouted (bottom to top) from the producing formation to the surface pursuant to Section 74:02:04:28.

Well Construction Rule Qualification No. 2

The well(s) authorized by Permit No. _____ shall be constructed by a licensed well driller and construction shall comply with Water Management Board Well Construction Rules, Chapter 74:02:04 with the well casing pressure grouted (bottom to top) pursuant to Section 74:02:04:28.

Irrigation Water Use Questionnaire Qualification

This permit is approved subject to the irrigation water use questionnaire being submitted each year.

Low Flow Qualification

Low flows as needed for downstream domestic use, including livestock water and prior water rights must be by-passed.

UNOPPOSED NEW WATER PERMITS ISSUED BY THE CHIEF ENGINEER WITHOUT A HEARING BEFORE THE BOARD: See attachment.

WATER PERMIT APPLICATION NO. 6400-3, OSCAR, INC.: Don Stroup presented his report on the application.

The application proposes to appropriate 6.86 cfs of James River water in Spink County to irrigate 480 acres. The annual period of use requested is from March 1 to October 31.

The applicant presently holds Water Permit Nos. 6330-3 and 6331-3 to irrigate 157 acres at the rate of 2.2 cfs and 157 acres at the rate of 2.23 cfs. The applicant proposes to supplement the well water irrigation with James River water.

US Geological Survey data indicates non-appropriated water is available in the James River during normal and greater stream flow conditions for the April through July annual period.

Mr. Stroup noted that Attachment 2 of his report shows the limits set by the Water Management Board from North Dakota/South Dakota state line to the Yankton County line. If this application is approved diversions from the total river and the Huron to North Dakota river reach would still be below the established limits.

The chief engineer recommended approval of Application No. 6400-3 with the Irrigation Water Use Questionnaire Qualification and the following qualifications:

1. Diversion of water from the James River shall be in accordance with the following criteria:
 - When pumping from the James River, low flows as needed for downstream domestic use, including livestock water and prior water rights must be by-passed.
 - From March 1 to March 31, diversions from the James River are authorized only when the flow at the Huron, SD Third Street Dam is at least 29 cfs while pumping under this permit.
 - From April 1 to June 30, diversions from the James River are authorized only when the flow at the Huron, SD Third Street dam is at least 63 cfs while pumping under this permit.
 - From July 1 to October 1, diversions from the James River are not authorized unless by written orders issued by the chief engineer.
 - Diversions under this permit shall be in accordance with any written orders issued by the chief engineer.
2. The diversion rate from Water Permit Nos. 6330-3 and 6331-3 (Tulare:Hitchcock Aquifer) and Permit No. 6400-3 (James River) for irrigation in the S ½ Section 5, T115N, R62W shall not exceed the statutory limit of 1 cfs per 70 acres and 2 acre-feet per acre.

Motion by Freeman, seconded by Brink, to approve Water Permit Application No. 6400-3, Oscar, Inc., subject to the qualifications set forth by the chief engineer. Motion carried.

WATER PERMIT APPLICATION NO. 6398-3, HARVEY WOLLMAN: Mr. Stroup presented his report on the application.

The application proposes to appropriate 0.61 cfs of James River water to irrigate 43 acres additional to those currently authorized by Water Right No. 2386-3. The applicant also proposes

to separate and transfer all of the land and the corresponding water diversion authorized by Water Right No. 2386-3 to other land for more efficient irrigation using a center pivot system. The annual period of use requested is from March 1 to September 30.

Mr. Stroup stated that SDCL 46-5-34 allows that all or any part of the right may be severed from the land and simultaneously transferred and become appurtenant to other land without losing priority of right previously established, subject to existing rights, upon approval of an application for an amended permit. No increase in total acres irrigated may be allowed.

Attachment 1 of Mr. Stroup's report is a map showing the location of the acres to be irrigated.

US Geological Survey data indicates that non-appropriated water is available in the James River during normal and greater stream flow conditions.

Mr. Stroup noted that if the application is approved, the total river and reach from Huron to North Dakota state line diversion rates from the James River would still be within the established limits.

The chief engineer recommended approval of Application No. 6398-3 with the Irrigation Water Use Questionnaire Qualification and the following qualification:

1. This qualification applies to the 43 acres and corresponding 0.61 cfs diversion rate authorized by Water Permit No. 6398-3. Diversion of water from the James River shall be in accordance with the following criteria:
 - When pumping from the James River, low flows as needed for downstream domestic use, including livestock water and prior water rights must be by-passed.
 - From March 1 to March 31, diversions from the James River are authorized only when the flow at the Huron, SD Third Street Dam is at least 29 cfs while pumping under this permit.
 - From April 1 to June 30, diversions from the James River are authorized only when the flow at the Huron, SD Third Street dam is at least 63 cfs while pumping under this permit.
 - From July 1 to September 1, diversions from the James River are not authorized unless by written orders issued by the chief engineer.
 - Diversions under this permit shall be in accordance with any written orders issued by the chief engineer.

Motion by Freeman, seconded by Gunderson, to approve Water Permit Application No. 6398-3, Harvey Wollman, subject to the qualifications set forth by the chief engineer. Motion carried.

WATER PERMIT APPLICATION NO. 2729A-3, HARVEY WOLLMAN: Jim Goodman presented his report on the application.

The application proposes to amend Water Right No. 2729-3 by transferring the irrigated acres and point of diversion to other land. Water Right No. 2729-3, which is held by LeRoy Gross, appropriates 1.11 cfs (500 gpm) from well in the SE $\frac{1}{4}$ of Section 2 to irrigate 120 acres located in the SE $\frac{1}{4}$ of Section 2, T 114N R62W in Spink County. This application proposes to move the location of the 120 acres to land owned by Harvey Wollman about $\frac{1}{2}$ mile northeast of the existing site. The water source for this irrigation system is the Tulare East James Aquifer and both the existing right and the new permit would be obtaining water from the same source.

SDCL 46-5-34 allows an irrigation water right to be severed from a parcel of land and simultaneously transferred to another parcel if it is impractical to use all or any part of the water beneficially or economically for irrigation on the current land.

The Tulare East James aquifer has been determined by the Water Management Board to be fully appropriated based upon water use. Mr. Goodman said the Water Management Board has transferred other water rights in this general vicinity.

The nearest existing water permit is located south of this application. Mr. Goodman said he does not believe interference will be a problem.

A hydrograph for observation well SP-77U, which is located in the immediate area of this application, is included in Mr. Goodman's report.

Mr. Goodman presented the following conclusions:

1. This application and Water Right No. 2729-3 both obtain water from the Tulare East James Aquifer.
2. Moving the irrigated lands and the diversion point as requested by this application will not adversely affect any other water permit/right in this area.
3. If this application is approved then Water Right No. 2729-3 would be considered abandoned and the well would be considered abandoned and must be plugged according to SD Well Construction Standards.
4. Water Right no. 2729-3 is held by LeRoy Gross. There is a letter on file with the Water Rights Program from Mr. Gross agreeing to transfer this right to Mr. Wollman and in support of application No. 2729A-3.
5. Water Right No. 2729-3 is licensed for 120 acres and a diversion rate of 1.11 cfs with a priority date of April 9, 1976. This is the full amount that can be transferred under SDCL 46-5-34.
6. Water Right No. 2729-3 may be subject to cancellation because of non-use. According to Water Right irrigation records, this right reported no water use from 1993 to present. The Water Management Board will have to decide if legal excuse exists to maintain this water right before a transfer can occur.
7. The applicant indicates that Water Right No. 2729-3 consisted of towlines which are no longer feasible to use and that tree belts exist on the land which make upgrading to

a pivot system difficult. The applicant does not wish to remove the trees to put up a pivot system. If Water Right No. 2729-3 is determined to be valid, this preceding statement would serve to justify the transfer based upon criteria established in SDCL 46-5-34.

The chief engineer recommended approval of Water Permit Application No. 2729A-3, Harvey Wollman, with the Well Interference Qualification, Well Construction Rule Qualification No. 2, the Irrigation Water Use Questionnaire Qualification and the following qualification:

The 120 acres located in the SE $\frac{1}{4}$ Section 2, T14N, R62W originally authorized for irrigation by Water Right No. 2729-3 shall no longer be irrigated once the irrigation system begins operating in the NW $\frac{1}{4}$ Section 1, T14N, R62W. The well located in the E $\frac{1}{2}$ SE $\frac{1}{4}$ Section 2, T14N, R62W shall be plugged in accordance with well construction standards.

Harvey Wollman was administered the oath by Chairman Rollag. Mr. Wollman testified that in 1991 he applied for a permit for this parcel of land. The permit was denied because the aquifer was fully appropriated.

Mr. Wollman stated that he and Mr. Gross are friends, neighbors, and Mr. Gross is employed by Mr. Wollman. Mr. Gross and Mr. Wollman have agreed to the transfer of this water permit.

Mr. Wollman stated that the irrigation permit was not used from 1993 to 1999 because it was abnormally wet. He said the towlines are no longer feasible to use and the tree belts that exist on the land make upgrading to a pivot system difficult.

Mr. Wollman requested approval of the transfer.

Responding to questions from Ms. Best, Mr. Wollman stated that he would drill a well this fall and put up a center pivot next year.

Responding to a question from Ms. Gunderson, Mr. Goodman stated that this application is to transfer the irrigated acres and point of diversion to other land.

Mr. Goodman explained the process of determining how much water is in the aquifer, what the annual recharge is, and how much water is used.

Motion by Gunderson, seconded by Loucks, to approve Water Permit Application No. 2729A-3, Harvey Wollman, subject to the qualifications set forth by the chief engineer. Motion carried.

WATER PERMIT APPLICATION NO. 6385-3, SDAPV DAIRY DEVELOPMENT: Mr. Goodman presented his report on the application.

The application proposes to appropriate 0.444 cfs (200 gpm) from two wells about 115 feet deep in Clark County. The water is for commercial use in a dairy operation.

The water source is the Altamont aquifer, which is a buried outwash (sand and gravel) under confined or artesian conditions at this site. The aquifer underlies 537,200 acres and contains an estimated 3.326 million acre-feet of recoverable water in storage in Clark County.

No test hole information was provided with this application. However, there is sufficient information available from county study maps and drill logs, water rights observation well records, and area drilling for irrigation wells and domestic wells to evaluate this application.

The Water Rights Program monitors two observation wells completed into the Altamont aquifer and located within two miles of this site. Hydrographs for these two wells are included in Mr. Goodman's report. The water levels for these wells show good response to climatic conditions. The water levels also respond to pumping of area irrigation wells which cause drawdown in the artesian head pressure. Mr. Goodman stated that in general, the water level record indicates that the aquifer is capable of sustaining additional withdrawals.

There are two existing irrigation wells within one mile of this application. The nearest well is about 2,400 feet northeast of this application. Interference will occur, but it is not expected to be adverse.

The chief engineer recommended approval of Water Permit Application No. 6385-3, SDAPV Dairy Development, LLC, with the Well Interference Qualification, Well Construction Rule Qualification No. 1, and the following qualifications:

1. Permit No. 6385-3 is subject to compliance with requirements of the Department's Water Pollution Control Permit issued pursuant to SDCL 34A-2-36 or 34A-2-112 for concentrated animal feeding operations.
2. Permit No. 6385-3 is subject to compliance with all existing and applicable Water Management Board Rules including but not limited to:
 - a) Chapter 74:54:01 Ground Water Quality Standards,
 - b) Chapter 74:54:02 Ground Water Discharge Permit,
 - c) Chapter 74:51:01 Surface Water Quality Standards,
 - d) Chapter 74:51:02 Uses Assigned to Lakes,
 - e) Chapter 74:51:03 Uses Assigned to Streams, and
 - f) Chapter 74:52:01 through 74:52:11 Surface Water Discharge Provisions.

Mr. Goodman noted that Plans and Specifications for this facility have been submitted and approved by the Department.

Motion by Brink, seconded by Holzbauer, to approve Water Permit Application No. 6385-3, SDAPV Dairy Development, LLC, subject to the qualifications set forth by the chief engineer. Motion carried.

WATER PERMIT APPLICATION NO. 6386-3, TIM PAZOUR: Mr. Goodman presented his report on the application.

The application proposes to appropriate 0.222 cfs (100 gpm) from one well approximately 900 feet deep in Brule County. The water is for commercial use in a livestock operation.

The water source is the Dakota Formation, which is a buried sand, sandstone and shale aquifer under artesian conditions at this site. The aquifer underlies 837 square miles and contains an estimated 12.65 million acre-feet of recoverable water in storage in Brule County.

The Water Rights Program monitors an observation well (BL-83A) completed into the Dakota Formation and located about 8 $\frac{1}{2}$ miles northwest of this site. A hydrograph for this well is included in Mr. Goodman's report. Water levels for this well have declined at a rate of about 0.4 feet per year since the well was installed. Total decline since 1891 was estimated at about 239 feet. Mr. Goodman noted that this could be attributed to the fact that there are large free-flowing wells in the area that are still flowing. Over the last 25-30 years an effort has been made to plug and control these free-flowing wells.

The chief engineer recommended approval of Water Permit Application No. 6386-3, Tim Pazour, with the Well Interference Qualification, Well Construction Rule Qualification No. 2, and the following qualifications:

1. Permit No. 6386-3 is subject to compliance with requirements of the Department's Water Pollution Control Permit issued pursuant to SDCL 34A-2-36 or 34A-2-112 for concentrated animal feeding operations.
2. Permit No. 6386-3 is subject to compliance with all existing and applicable Water Management Board Rules including but not limited to:
 - a) Chapter 74:54:01 Ground Water Quality Standards,
 - b) Chapter 74:54:02 Ground Water Discharge Permit,
 - c) Chapter 74:51:01 Surface Water Quality Standards,
 - d) Chapter 74:51:02 Uses Assigned to Lakes,
 - e) Chapter 74:51:03 Uses Assigned to Streams, and
 - f) Chapter 74:52:01 through 74:52:11 Surface Water Discharge Provisions.

Motion by Gunderson, seconded by Freeman, to approve Water Permit Application No. 6386-3, Tim Pazour, subject to the qualifications set forth by the chief engineer. Motion carried.

WATER PERMIT APPLICATION NOS. 6394-3 AND 6395-3, HUTTERVILLE HUTTERIAN BRETHREN: Mr. Goodman presented his reports on the applications.

Water Permit Application No. 6394-3 proposes to appropriate 0.49 cfs (220 gpm) from four existing wells approximately 987 feet, 103 feet, 70 feet, and 55 feet deep in Brown County. The water is for commercial use in animal feeding operations and for domestic use at Hutterville Colony.

Mr. Goodman reported that the deeper well is in the Dakota Formation and the three shallower wells are in the Pleistocene Unknown aquifer.

The Dakota Formation consists of a buried sand, sandstone and shale that is under artesian conditions. The well will free flow at the land surface and has been used by the colony for many years.

The Pleistocene Unknown refers to the fact that this aquifer is not mapped or is not well understood. The aquifer is sand and gravel and the colony has used the wells at this site for many years.

The Water Rights Program does not monitor any observation wells completed into the Pleistocene Unknown or Dakota aquifers in this area.

There are no existing water permits/rights from either the Dakota Formation or the Pleistocene Unknown aquifers in this area. The nearest Dakota Formation permitted user is over six miles to the northwest and in Stratford. Interference is not a concern.

Mr. Goodman concluded that water is available from both aquifers. The well records on file indicate that the two newest wells have been completed in accordance with SD Well Construction Standards. No information is available for the two older wells. The plans and specifications for handling the wastewater from this facility have been submitted to the department and are presently under review.

The chief engineer recommended approval of this application with the Well Interference Qualification, and the following qualifications:

1. Permit No. 6394-3 is subject to compliance with requirements of the Department's Water Pollution Control Permit issued pursuant to SDCL 34A-2-36 or 34A-2-112 for concentrated animal feeding operations.
2. Permit No. 6394-3 is subject to compliance with all existing and applicable Water Management Board Rules including but not limited to:
 - a) Chapter 75:54:01 Ground Water Quality Standards,
 - b) Chapter 74:54:02 Ground Water Discharge Permit,
 - c) Chapter 74:51:01 Surface Water Quality Standards,
 - d) Chapter 74:51:02 Uses Assigned to Lakes,
 - e) Chapter 74:51:03 Uses Assigned to Streams, and
 - f) Chapter 74:52:01 through 74:52:11 Surface Water Discharge Provisions.

Water Permit Application No. 6395-3 proposes to appropriate 0.71 cfs (320 gpm) from one well approximately 115 feet deep to irrigate 50 acres of garden in Brown County. The water source is the Pleistocene Unknown aquifer.

Information on the production well indicates it was capable of producing 75 gpm using air. The well is completed in accordance with SD Well Construction Standards.

There are no existing water permits/rights in this area other than Water Permit Application No. 6394-3.

The chief engineer recommended approval of the application with the Well Interference Qualification and the Irrigation Water Use Questionnaire Qualification.

Motion by Freeman, seconded by Gunderson, to approve Water Permit Application Nos. 6394-3 and 6395-3, Hutterville Hutterian Brethern, Inc., subject to the qualifications set forth by the chief engineer. Motion carried.

CANCELLATION CONSIDERATIONS: Eric Gronlund reported that four water rights/permits and one US Withdrawal were scheduled for cancellation. The right/permit owners on the cancellation list were notified of the hearing and the reason for cancellation. No letters in opposition to the cancellations were submitted.

The following were recommended for cancellation for the reasons listed.

US Withdrawal No. 593-3 now owned by Gary Wilson; abandonment/forfeiture
Water Right No. 2522-3 filed by Robert Monfore (M-4 Ranch) now owned by Rick Hurd; abandonment

Water Right No. 4107-3 filed by Gary Wilson; abandonment/forfeiture

Water Right Nos. 5618-3 and 5619-3 filed by Daniel Cronin now owned by Cronin Farms, Inc., (c/o Monte Cronin); abandonment.

Motion by Gunderson, seconded by Freeman, to cancel the four water rights and the US Withdrawal for the reasons listed. Motion carried.

SEVEN YEAR REVIEW OF FUTURE USE PERMIT: All future use permits are required to be reviewed every seven years for anticipated development and future need. Eric Gronlund stated that Future Use No. 5209-3, Kingbrook RWS was scheduled for review.

The future use review was public noticed in newspapers in the nine counties Kingbrook Rural Water System serves. The department received no petition to intervene.

Mr. Gronlund noted that this future use permit was approved in 1989 for 1,100 acre-feet of water from the East Fork Management Unit of the Vermillion Aquifer. The future use currently has 550 acre-feet remaining in reserve.

The rural water system expressed an interest in retaining their permit to meet the projected needs. Information provided by the rural water system indicates a current approximate use of 736 acre-feet and a need for 950 acre-feet in 2010.

The chief engineer recommended allowing the future use permit to remain in effect for 550 acre-feet.

Randy Jenks, General Manager of Kingbrook RWS, was administered the oath by Chairman Rollag. He testified that the rural water system has experienced significant growth during the last 10 years. The projection for future use includes communities within the service area which are not yet served by Kingbrook and the Lake Norden Cheese Plant. The rural water system has received requests from potential users. Right now the rural water system is averaging about 55% of its permitted use.

Motion by Freeman, seconded by Holzbauer, to allow Future Use Permit No. 5209-3, Kingbrook Rural Water System to remain in effect for 550 AF. Motion carried.

CONSIDER DEFERRED APPLICATIONS: Mr. Gronlund reported that two deferred permit applications were scheduled for consideration.

Water Permit Application No. 3957-3 was filed by Edward Swenson in 1976 to appropriate 2.22 cfs from the Niobrara Formation to irrigate 240 acres approximately one mile north of Woonsocket in Sanborn County. At the time it was public noticed, 57 area residents filed petitions in opposition to the permit. The Water Rights Commission deferred the application at its July 1977 meeting because of concerns over water availability and the suitability of the water in the soils.

The Water Rights Program began communicating with Mr. Swenson regarding the deferred application in 2001 to determine whether he still wanted to obtain the permit. At that time, Mr. Swenson requested more time to consider his options. The Water Rights Program tried to address this matter with Mr. Swenson in February 2003, but received no response from him.

The chief engineer recommended denial of the permit because there has not been an effort to obtain the permit during the last 25 years.

Mr. Gronlund noted that Mr. Swenson would be able to file a new application in the future if he chose to do so.

Motion by Gunderson, seconded by Freeman, to deny Water Permit Application No. 3957-3, Edward Swenson. Motion carried.

Application No. 1463-1 was filed by Donald Kissack in 1989 to appropriate 0.62 cfs from the Redwater River to irrigate 21.6 acres with a claimed priority date of April 7, 1897. This is a vested water right application, which has supposedly been irrigated historically and is still being irrigated today. In 1989, Mr. Kissack's affidavit of water use included a location notice for Spearfish Creek. Based on that, the Water Management Board deferred consideration of the application until additional information documenting the use of water for irrigation was submitted. In the interim, Mr. Kissack has passed away and his son now holds the property.

Mr. Gronlund met with Mr. Kissack in April and explained that more information is needed to prove up this claim. Mr. Kissack has submitted some documents, but the documents do not satisfy what is needed.

The chief engineer recommended deferral of this application until the July 2003 meeting.

Mr. Brink asked whether Mr. Kissack is now using the water. Mr. Gronlund answered that this was originally a water-spreading system and there was a diverting dam in the Redwater River, which basically provided the head into spreader ditches. That dam washed out in the mid-1960s, but was never repaired. Since that time, the Kissack's have used pumps at three different locations to water-spread. Mr. Gronlund stated that Mr. Kissack indicated to him that the water has continually been used since 1965.

Motion by Brink, seconded by Holzbauer, to defer No. 1463-1 until the July 2003 Water Management Board meeting. Motion carried.

APPLICATION NOS. 6387-3 AND 6388-3, CONCRETE MATERIALS: Don Stroup presented his reports on the applications.

Application No. 6387-3 proposes to appropriate 2.22 cfs of ponded runoff and ground water for use in sand/gravel processing and ready mix concrete plants to be developed in Near Corson, SD. Water appropriations from Split Rock Creek covered under Application No. 6388-3 will be used as required to augment onsite ponded water use. Application No. 6388-3 proposes to appropriate 2.22 cfs of Split Rock Creek water for use in the sand/gravel processing and ready mix concrete plant. The water appropriation of the applications will be limited to the combined total of 2.22 cfs.

Attachment 2 of Mr. Stroup's report is a Site Water Interflow Schematic. At the start of the sand and gravel processing season, water from the No. 1 East Pit and the No. 2 West Pit ponds and as required, Split Rock Creek, would be used to fill all the water and sediment ponds. The plan is for water to be pumped from Water Pond No. 3 to the sand and gravel processing plant and after use to the main sediment ponds. From the main sediment ponds, the water would be pumped back to Water Pond Nos. 2 and 3. Losses would initially be augmented with water from Water Pond No. 1, then from the Sandpile Sediment Pond if required. Additional water from the No. 1 and No. 2 Pit ponds and Split Rock Creek would be used as necessary during the sand and gravel processing season to make up for evaporation and other consumptive losses, such as dust control and equipment cleaning.

An engineering analysis completed for the applicant shows that when both plants are operational Concrete Materials would be using 2.2 cfs when the well for the Brandon Materials plant is in place and pumping at 250 gpm.

The engineering analysis also shows that slurries from the Brandon Materials plant will be discharged into the sediment ponds located near the plant and allowed to evaporate and harden. The ready mix sediment ponds are designed to fully contain the 100-year, 24-hour storm event

and provide for total water retention during the year. After testing to ensure water quality standards are met, this water will be either recycled or discharged.

Mr. Stroup stated that US Geological Survey historical data shows water is available in Split Rock Creek and there should be water available from runoff into ponds.

The chief engineer recommended approval of Water Permit Application No. 6387-3, Concrete Materials, with the following qualification:

Water Permit No. 6387-3 and 6388-3, combined, authorize 10 storage dams or ponds with a total storage capacity of 65 acre-feet of water and a total diversion rate of 2.22 cfs. The dams or ponds may be filled one or more times per year.

The chief engineer recommended approval of Water Permit Application No. 6388-3, Concrete Materials, with the following qualifications:

1. Water Permit No. 6387-3 and 6388-3, combined, authorize 10 storage dams or ponds with a total storage capacity of 65 acre-feet of water. The dams or ponds may be filled one or more times per year.
2. Split Rock Creek low flows as needed for downstream domestic use, including livestock water and prior water rights must be bypassed.

Motion by Gunderson, seconded by Brink, to approve Water Permit Application Nos. 6387-3 and 6388-3, Concrete Materials, subject to the qualifications set forth by the chief engineer. Motion carried.

WATER PERMIT APPLICATION NO. 1783-1, FENTON FARMS: Mark Rath presented his report on the application.

The application proposes to appropriate 0.96 cfs from the Belle Fourche River to irrigate 69.4 acres. This project is located approximately three miles east of the town of Nisland.

The source of water is the Belle Fourche River downstream from the Belle Fourche River Diversion Dam. The Diversion Dam diverts Belle Fourche River water into Belle Fourche Reservoir for use on the Belle Fourche Irrigation District.

The flow on this particular stretch of the river is controlled by what happens at the diversion dam. There is a small bypass structure to put water back into the river to take care of a senior water right and for domestic use. Just downstream of this application is the confluence with Owl Creek. -Owl Creek is the drainage where the Orman Dam is located. It is also the major drain return flow for the Belle Fourche Irrigation District. During the irrigation season, there tends to be a lot of return flows that come back into the river from Owl Creek. About a 30-mile stretch of the river has a problem with flows, but below the confluence with Owl Creek the flows are generally sufficient for the water that is appropriated.

Mr. Rath's report contains a probability of flow for a US Geological Survey gauging station located on the Belle Fourche River near Fruitdale 19 miles upstream from this application. During a portion of the time the flow is not very good. When the water is higher and Orman Dam has filled, the majority of the flow is then released back into this 30-mile stretch and water is again available.

The chief engineer recommended approval of Application No. 1783-1 with the Irrigation Water Use Questionnaire Qualification and the following qualifications:

1. The diversion of water is authorized only when 22.0 cfs or more is flowing past the USGS gauging station on the Belle Fourche River near Fruitdale, SD to protect existing water rights/permits.
2. A minimum of 5.0 cfs shall be bypassed at the point of diversion to protect domestic use, including livestock water and fisheries in the river. Dewatering of the river is not allowed.
3. The diversion of water shall be in accordance with any written orders issued by the chief engineer.

Mr. Rath stated that in the past the Water Management Board has issued water permits with flow bypass qualifications to protect domestic use and senior water rights. If this permit is approved, 33.26 cfs would be appropriated in the reach from the Fruitdale gauging station to the Owl Creek confluence. An assumption was made that no more than 50% of the authorized diversion rate is pumped at any given time. The Water Rights Program recommended that if the board approves this permit it be issued with a qualification requiring a 17 cfs bypass to protect senior water rights, plus an additional 5 cfs to protect domestic use. So the total recommended bypass, as measured at the Fruitdale gauging station, would be 22 cfs.

Mr. Rath stated that the Bureau of Reclamation has a reservoir in eastern Wyoming (Keyhole Reservoir) which is a structure that stores water in the Belle Fourche River providing releases for water for South Dakota and water for Wyoming. There is a state compact issue with Wyoming for the water. South Dakota gets 90% of the water in Keyhole Reservoir and Wyoming gets 10%. The Belle Fourche Irrigation District has only contracted for about 7.5% of the 90% that South Dakota gets. The Bureau of Reclamation is willing to contract with other users on a year to year basis for water in the Belle Fourche River.

Motion by Brink, seconded by Loucks, to approve Water Permit Application No. 1783-1, Fenton Farms, Inc., subject to the qualifications set forth by the chief engineer. Motion carried.

WATER PERMIT APPLICATION NO. 1789-1, STURGIS WATER DEPARTMENT: Ken Buhler presented his report on the application.

The application proposes to appropriate 1.0 cfs (450 gpm) from one well completed into the Madison aquifer. The water is for municipal use.

The Madison is a massive aquifer that underlies about 30,000 square miles of western South Dakota and contains approximately 640 million acre-feet of recoverable water in storage in the state. The proposed well will be about two miles from the Madison outcrop, which is the recharge area. The top of the Madison is about 860 feet below grade at this location. Estimated recharge to the Madison is 140,000 to 400,000 acre-feet per year.

The Water Rights Program monitors 26 observation wells completed into the Madison Aquifer in the Black Hills area. There are three observation wells located within five miles of this application. Hydrographs for those wells are contained in Mr. Buhler's report. Water levels do not show any apparent decline and suggest that under existing conditions the natural influences dominate the water levels and the effects of pumping are not obvious.

There are 124 water permits/rights appropriating approximately 10,990 acre-feet per year. Comparing that with the average annual recharge, water availability is not an issue.

There are 22 water permits/rights appropriating groundwater within about 2 $\frac{1}{2}$ miles of this proposed well site. Table 1 in Mr. Buhler's report lists the appropriations for those 22 permits/rights. Most of the appropriations are from shallower aquifers. Since there is a hydrologic separation between the Madison and shallower aquifers, interference is not a concern.

The nearest Madison aquifer permit is (No. 1709-1, Murray Water Company) about 2,000 feet west of this application. Murray Water Company made several inquiries and expressed some concern regarding this application during the test drilling process.

There are several domestic wells in the area. Adverse impact to domestic wells is not probable.

SDCL 46-2A-20 requires a 20-year term limit on all Madison formation permits in Butte, Fall River, Custer, Lawrence, Meade and Pennington Counties. Mr. Buhler stated that at this time there is no evidence that would support issuing the permit without a 20-year term limit.

The chief engineer recommended approval of Water Permit Application No. 1789-1 with the Well Interference Qualification, Well Construction Rule Qualification No. 1, and the following qualifications:

1. In accordance with SDCL 46-1-14 and 46-2A-20, Permit No. 1789-1 is issued for a twenty-year term. Pursuant to SDCL 46-2A-21, the twenty-year term may be deleted at any time during the twenty-year period or following its expiration. If the twenty-year term is not deleted at the end of the term, the permit may either be cancelled or amended with a new term limitation of up to twenty years. Permit No. 1789-1 may also be cancelled for nonconstruction, forfeiture, abandonment or three permit violations pursuant to SDCL 46-1-12, 46-5-37, 46-5-37.1, and ARSD 74:02:01:37.
2. The Sturgis Water Department shall report to the chief engineer annually the amount of water withdrawn from the Madison Aquifer.

Motion by Brink, seconded by Loucks, to approve Water Permit Application No. 1789-1, Sturgis Water Department, subject to the qualifications set forth by the chief engineer. Motion carried.

OTHER BUSINESS: Diane Best presented Senate Bill No. 177 which is an act to revise certain provisions relating to contested cases under the Administrative Procedures Act and the Office of Hearing Examiners. The bill provides that in any administrative action in state government the hearing notice has to include language that a hearing examiner may be available, but the person has the right to a hearing examiner only if the amount in controversy exceeds \$2,500 or if a property right may be terminated. Ms. Best stated that the department is taking the position that a number of those matters before the Water Management will not involve the termination of property rights and will not involve an amount in controversy in excess of \$2,500. The department will still include this language in the hearing notice.

The staff has taken the position that the types of hearings where a hearing examiner could be available are those situations involving cancellation, abandonments/forfeitures, and action on a well driller's license. Ms. Best noted that the department will include the language regarding a hearing examiner in all hearing notices.

Missouri River Litigation: The lawsuit that South Dakota filed last year regarding the Missouri River ultimately went before the 8th Circuit Court of Appeals and was combined with the North Dakota and Nebraska lawsuits and a consolidated appeal that was argued in February 2003. The 8th Circuit Court of Appeals has not yet made a ruling. The critical issue in the case is how closely the Corps must adhere to the Master Manual in the operation of the Missouri River.

In the meantime, there are continuing water problems and there have been three new lawsuits filed. The first lawsuit was filed by American Rivers in the Washington D.C. circuit against the Army Corps of Engineers and is related to endangered species. The second and third lawsuits were filed in late April 2003.

One is a lawsuit filed by downstream navigation interests against the Army Corps of Engineers, the Department of Interior, and the three upstream states. With respect to the three upstream states, the lawsuit claims that the stocking of walleye and non-native species is detrimental to the Palid Sturgeon, an endangered species and that those species prey on Palid Sturgeon. They have also taken action against the Department of Interior with regard to its determination of critical habitat for the Piping Plover, which has been listed as an endangered species for some time now. They are also suing the Army Corps of Engineers for its determination that it would do analysis of water flows in the 2003 annual operating plan. Currently, there will be a six-day shortening of the navigation season.


North Dakota has filed a lawsuit against the Army Corps of Engineers claiming that the discharges out of Sakakawea are so great that it's causing areas of the lake to no longer meet cold water fish habitat water quality standards under the water pollution control laws. The State of South Dakota is intervening in that lawsuit.

Water Management Board
May 7, 2003, Meeting Minutes

ADJOURN: Chairman Rollag declared the meeting adjourned at 12:15 p.m. CDT.

The meeting was tape recorded and duplicate cassette tapes may be obtained by contacting the Department of Environment and Natural Resources, 523 East Capitol Avenue, Pierre, SD 57501; telephone number 605-773-3886.

Approved this 10th day of July, 2003.



Leo Holzbauer, Chairman



Bernita Loucks, Secretary

DRILLER'S LICENSE REQUIREMENTS

		MINNESOTA	IOWA	NEBRASKA	WYOMING	MONTANA	NORTH DAKOTA	SOUTH DAKOTA
Driller's License Required?		YES	YES	YES	NO	YES	YES	YES
Fee	Test (application)	\$50	\$50	\$25		\$300	\$10	
	License	\$250	\$300/2yr	\$150		\$250	\$50	\$50
Experience Required		4 Yrs, 5 wells/yr 1000 hrs. (1/2 time)	2 Yrs.	None required		1 Yr. apprenticeship or another state's license	1 Yr. in last 3 Yrs. 6 wells/Yr.	5 Yrs.
Examination	Written	Code	Code	Geology, Code, Specialized Skills/ drilling category		Skills & Code	Skills & Code	
	Oral	General & Code						
Bonding?		\$10,000				\$10,000	\$2,000	
Proof of Insurance?				\$100,000				
Other				2 Affidavits of Moral Character				

WATER MANAGEMENT BOARD MEETING

May 7, 2003

Qualifications:

wi-well interference
wcr -well construction rules
iq - irrigation questionnaire
lf - low flow

Unopposed New Water Permit Applications Issued Based on the Chief Engineer Recommendations

No.	Name	Address	County	Amount	Use	Source	Qualifications
1784-1	Mark Jensen	Newell	BU	190 AF	fwp,livestock	runoff and Hans Creek	If, 1 special
1785-1	Jerry Seaman	Newell	BU	0.44 cfs	30.6 acres	runoff, 4.3 AF storage dam	If, iq, 1 special
827E-2	Rittberger Brothers	Hermosa	CU	No add'l	no add'l	Cheyenne River	iq, 2 special
1024A-2	Rittberger Brothers	Hermosa	CU	No add'l	no add'l	Cheyenne River	iq, 2 special
2496-2	Spring Canyon Water Co.	Rapid City	PE	0.17 cfs	shd	1 well-Madison Aquifer	wi, wcr, 1 special
2498-2	Countryside Homeowners	Rapid City	PE	0.111 cfs	shd	2 wells-Madison & Minnelusa	wi, wcr, 1 special
2499-2	Rex E Pfaff	Bonesteel	GY	0.54 cfs	38 acres	Ponca Creek & existing dam	iq, 1 special
2500-2	Town of Keystone	Keystone	PE	0.22 cfs	municipal	1 well-Precambrian crystalline	wi, wcr, 1 special
2501-2	North End Farms	Hermosa	CU	1.78 cfs	150 acres	30.7 AF dam-unnamed trib. to Cheyenne River	iq, If, 4 special
2502-2	Paul or Mary Ann Fanning	Tuthill	BT	2.22 cfs	187 acres	1 well-Ogallala Aquifer	wi, wcr, iq
1619E-3	Gary Holzbauer	Wagner	CM	No add'l	no add'l	1 well-Choteau: West Aquifer	wi, wcr, iq & 1 special
6334A-3	Peterson Farms	Hitchcock	BD	No add'l	no add'l	1 well-Tulare:Western Spink	wi, wcr, iq
6381-3	DeVries, Inc.	Cavour	BD	1.78 cfs	134 acres	1 well-Floyd:East James	wi, wcr, iq
6383-3	James Bondesen	Hurley	TU	2.0 cfs	90 acres	1 well-Parker Centerville	wi, wcr, 2 special
6384-3	Gary & Dianne Foster	Bruce	BG	1.45 cfs	27 acres	1 well-Big Sioux:Brookings	wi, iq
6389-3	Robert L DeJong	Lesterville	YA	No add'l	8 acres	1 well-L James Miss-Scotland	wi, iq
6390-3	Arland Jantz	Carpenter	BD	3.57 cfs	250 acres	2 wells-Floyd:East James Aqu	wi, wcr, iq,2 special
6391-3	Lee Rohrs	Syracuse NE	CM	1.91 cfs	134 acres	1 well-Choteau West Aquifer	wi, iq, 1 special
6392-3	Brian Herboldt	Menno	HT	4.44 cfs	320 acres	2 wells-Lower James Miss.	wi, wcr, iq
6393-3	Brandon Materials	Brandon	MA	0.22 cfs	industrial/commercial	1 well-Brandon, Sioux Quartzite or Split Rock Creek Form	wi, wcr, 1 special
6396-3	Carey Buhler	Mitchell	DG	1.43 cfs	100 acres	2 wells-Delmont Aquifer	wi, wcr, iq
6397-3	SD Dept of Transportation	Vermillion	UN	0.1 cfs	institutional	1 well-L Vermillion:Missouri	wi, wcr